

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

TRANSLATION
PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

To:

Date of mailing **See form PCT/ISA/210**
(day/month/year)

Applicant's or agent's file reference

UNIVPMCTROCA

FOR FURTHER ACTION

See paragraph 2 below

International application No.

PCT/FR2005/000042

International filing date (day/month/year)

07.01.2005

Priority date (day/month/year)

07.01.2004

International Patent Classification (IPC) or both national classification and IPC

A61B17/34, A61P19/00

Applicant

UNIVERSITE PIERRE ET MARIE CURIE

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/EP

Authorized officer

Facsimile No.

Telephone No.

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/FR2005/000042

Box No. I

Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐

This opinion has been established on the basis of a translation from the original language into the following language

_____, which is the language of a translation furnished for the purposes of international search (under Rule 12.3 and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

☐

a sequence listing

☐

table(s) related to the sequence listing

b. format of material

☐

in written format

☐

in computer readable form

c. time of filing/furnishing

☐

contained in the international application as filed.

☐

filed together with the international application in computer readable form.

☐

furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

International application No.
PCT/FR2005/000042

| 1. Statement | | | |
|-------------------------------|--------|----------------------|-----|
| Novelty (N) | Claims | <u>3, 5, 8-14</u> | YES |
| | Claims | <u>1, 2, 4, 6, 7</u> | NO |
| Inventive step (IS) | Claims | <u></u> | YES |
| | Claims | <u>1-14</u> | NO |
| Industrial applicability (IA) | Claims | <u>1-14</u> | YES |
| | Claims | <u></u> | NO |

1. Reference is made to the following document:

2. INDEPENDENT CLAIM 1

Document D1 describes (the references in parentheses apply to this document) a trocar device (10) for the passage of a surgical instrument (24) (see D1, column 4, lines 40 to 42), characterized in that it includes means for measuring (see D1, column 2, lines 37 to 40) the force exerted by the said instrument (24) on a patient's internal organs (see D1, column 2, lines 51 to 55). The content of document D1 therefore anticipates the subject matter of claim 1. It is clear that the notion of taking measurements on the patient's internal organs is specified by D1 (see D1, column 2, lines 2 to 36). The subject matter of claim 1 is not novel.

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/FR2005/000042

Box No. V

Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

3. DEPENDENT CLAIMS 2-14

The claims do not contain any features which, when combined with the features of any claim to which they refer, will satisfy the requirements of the PDT with regard to novelty and inventive step (PCT Article 33(2) and (3)).

3.1. Document D1 also includes a trocar (32) characterized in that the measuring means (21) are in the form of a load sensor (claim 2). The sensor is in the form of a wheel with a central opening (claim 4). The guide is in the form of a tubular element with a longitudinal axis (X-X) comprising a circular plate perpendicular to (X-X) (claim 6). The guide is inserted through the central opening of the load sensor and the trocar device (claim 7) (see document D1, column 5, line 2 to column 5, line 34 and figure 2). The content of D1 therefore anticipates the subject matter of claims 2, 4, 6 and 7.

3.2. The subject matter of claim 3 specifies that the said load sensor is arranged on the trocar, and more precisely between the said trocar (9) and a guide (12) according to claim 5; however, this feature does not imply any advantages other than those that result from the properties of this device, advantages that are disclosed in document D1, i.e. the ability to estimate the instrument/organ interaction force.

The feature of having the load sensor arranged "on the trocar" and not "inside the trocar" is just one of the possibilities that a person skilled in the art might

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Box No. V

Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

choose, depending on the individual case, from among several obvious possibilities for solving the problem posed without applying an inventive step. Thus, the subject matter of claims 3, 5 and 8-14 does not involve an inventive step.

4. Contrary to the requirements of PCT Rule 5.1(a)(ii), the description does not indicate the relevant prior art disclosed in document D1 and does not cite this document.

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(PCT Rule 43bis.1)

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| <div style="border: 1px solid black; width: 100%; height: 100%;"></div> | | <p>Date of mailing (day/month/year) See form PCT/ISA/210</p> |
| <p>Applicant's or agent's file reference UNIVPMCTROCA</p> | | <p>FOR FURTHER ACTION See paragraph 2 below</p> |
| <p>International application No. PCT/FR2005/000042</p> | <p>International filing date (day/month/year) 07.01.2005</p> | <p>Priority date (day/month/year) 07.01.2004</p> |
| <p>International Patent Classification (IPC) or both national classification and IPC A61B17/34, A61P19/00</p> | | |
| <p>Applicant UNIVERSITE PIERRE ET MARIE CURIE</p> | | |

| | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|--------------|--|-----------|----------------------|--------------------------|------------|----------|--------------------------|-------------|--|--------------------------|------------|----------------------------|-------------------------------------|-----------|--|--------------------------|------------|-------------------------|--------------------------|-------------|--|--------------------------|--------------|---|
| <p>1. This opinion contains indications relating to the following items:</p> <table style="width: 100%;"> <tr> <td style="width: 10%; text-align: center;"><input checked="" type="checkbox"/></td> <td style="width: 20%;">Box No. I</td> <td>Basis of the opinion</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. II</td> <td>Priority</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. V</td> <td>Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </table> | | <input checked="" type="checkbox"/> | Box No. I | Basis of the opinion | <input type="checkbox"/> | Box No. II | Priority | <input type="checkbox"/> | Box No. III | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability | <input type="checkbox"/> | Box No. IV | Lack of unity of invention | <input checked="" type="checkbox"/> | Box No. V | Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement | <input type="checkbox"/> | Box No. VI | Certain documents cited | <input type="checkbox"/> | Box No. VII | Certain defects in the international application | <input type="checkbox"/> | Box No. VIII | Certain observations on the international application |
| <input checked="" type="checkbox"/> | Box No. I | Basis of the opinion | | | | | | | | | | | | | | | | | | | | | | | |
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| <input type="checkbox"/> | Box No. VI | Certain documents cited | | | | | | | | | | | | | | | | | | | | | | | |
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| <input type="checkbox"/> | Box No. VIII | Certain observations on the international application | | | | | | | | | | | | | | | | | | | | | | | |
| <p>2. FURTHER ACTION</p> <p>If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.</p> <p>If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.</p> <p>For further options, see Form PCT/ISA/220.</p> | | | | | | | | | | | | | | | | | | | | | | | | | |
| <p>3. For further details, see notes to Form PCT/ISA/220.</p> | | | | | | | | | | | | | | | | | | | | | | | | | |

| | |
|---|---------------------------|
| <p>Name and mailing address of the ISA/EP</p> | <p>Authorized officer</p> |
| <p>Facsimile No.</p> | <p>Telephone No.</p> |

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INTERNATIONAL SEARCHING AUTHORITY

International application No.

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PCT/FR2005/000042

Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

| | | | |
|-------------------------------|--------|----------------------|-----|
| Novelty (N) | Claims | <u>3, 5, 8-14</u> | YES |
| | Claims | <u>1, 2, 4, 6, 7</u> | NO |
| Inventive step (IS) | Claims | <u></u> | YES |
| | Claims | <u>1-14</u> | NO |
| Industrial applicability (IA) | Claims | <u>1-14</u> | YES |
| | Claims | <u></u> | NO |

2. Citations and explanations:

1. Reference is made to the following document:

D1: EP 0 624 346

2. INDEPENDENT CLAIM 1

2.1. The present application fails to comply with the requirements of PCT Article 33(1) since the subject matter of claim 1 does not fulfil the criterion of novelty defined in PCT Article 33(2).

Document D1 describes (the references in parentheses apply to this document) a trocar device (10) for the passage of a surgical instrument (24) (see D1, column 4, lines 40 to 42), characterized in that it includes means for measuring (see D1, column 2, lines 37 to 40) the force exerted by the said instrument (24) on a patient's internal organs (see D1, column 2, lines 51 to 55). The content of document D1 therefore anticipates the subject matter of claim 1. It is clear that the notion of taking measurements on the patient's internal organs is specified by D1 (see D1, column 2, lines 2 to 36). The subject matter of claim 1 is not novel.

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choose, depending on the individual case, from among several obvious possibilities for solving the problem posed without applying an inventive step. Thus, the subject matter of claims 3, 5 and 8-14 does not involve an inventive step.

4. Contrary to the requirements of PCT Rule 5.1(a)(ii), the description does not indicate the relevant prior art disclosed in document D1 and does not cite this document.